

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer
Marshall Johnson
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Tomas Pugh
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Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Request for Service in
Qwest's Tofte Exchange

ISSUE DATE: July 11, 2005

DOCKET NO. P-421/CP-00-686

ORDER ACCEPTING AND MODIFYING
AGREEMENT AND REQUIRING
COMPLIANCE FILING

PROCEDURAL HISTORY

On April 25, 2005, the Minnesota Office of Administrative Hearings (OAH) issued its Findings of Fact, Conclusions of Law and Recommendation regarding the cost and other terms under which Qwest Corporation (Qwest) should extend local telephone service to certain areas of rural Cook County, Minnesota. Qwest and the Minnesota Department of Commerce (the Department) filed exceptions to this recommendation, and replied to each other's exceptions.

On June 10, 2005, the Department and Qwest proposed an agreement to settle this matter (the Agreement), and sent copies of the agreement to the petitioners.

On June 16, 2005, the Commission gave notice of its intent to resolve the issue at its June 28 meeting.

On June 28, 2005, the Commission held oral argument and the record closed for purposes of Minnesota Statutes § 14.61, subdivision 2. No party opposed the Agreement.

FINDINGS AND CONCLUSIONS

I. Background

Cook County, located in the northeastern tip of Minnesota, has rugged terrain and sparse population. Qwest is assigned to provide local telephone service there. Qwest placed telephone switches in the communities of Tofte and Grand Marais along the Lake Superior's north shore, and determined which portions of the county should be served by each switch. But much of the county's interior remains beyond the reach of Qwest's facilities.

By law, telephone companies file tariffs with the Commission setting forth the services they provide and the corresponding charges.¹ As early as 2000, Qwest's tariff stated that when a customer requested service to an unserved location, Qwest would extend facilities up to 700 feet beyond its existing network facilities at no incremental charge to the consumer, and would charge the customer a one-time construction charge of \$55 per line plus \$0.51 per foot to extend facilities further.² The tariff also provided for Qwest to impose an "excess construction charge" where the installation would not otherwise constitute a "prudent investment" for Qwest.³

On May 31, 2000, the Commission received a petition for wireline telephone service signed by approximately 70 people with property on five lakes north of Lutsen in the area to be served by the Tofte switch (the Tofte exchange service area).

On December 14, 2000, Qwest estimated the cost to serve the petitioners' 68 residences at \$2.2 million, or an average of more than \$30,000 per residence.

On June 21, 2002, the Commission ordered Qwest to install land-line phone service to the petitioners in the Tofte exchange service territory, now numbering roughly 100.⁴ In contribution to these construction costs, the Commission authorized Qwest to charge customers a one-time fee of \$55.00 per line and \$0.51 per foot from the point where Qwest's service line passes the property of a customer wanting service. The Commission granted Qwest's petition to reconsider its decision,⁵ but subsequently reaffirmed it on October 21.⁶

On November 27, 2002, Qwest appealed the Commission's Orders to the Minnesota Court of Appeals. The Court reversed the Orders and remanded the matter to the Commission with instruction to determine a fair and reasonable allocation of construction costs consistent with Qwest's tariff.⁷

¹ Minn. Stat. §§ 237.075, 237.63.

² Qwest Exchange and Network Tariff, §§ 4.1.B.16 and .17.

³ *Id.* at § 4.1.B.1.

⁴ ORDER REQUIRING SERVICE TO THE UNSERVED AREA OF QWEST'S TOFTE EXCHANGE AND REQUIRING CUSTOMER CONTRIBUTION.

⁵ ORDER REQUIRING PROPOSAL.

⁶ ORDER REJECTING PROPOSAL AND REAFFIRMING PREVIOUS ORDER.

⁷ *In the Matter of the Request for Service in Qwest's Tofte Exchange*, 666 N.W.2d 391 (Minn. App. 2003).

On January 28, 2004, the Commission asked the OAH to further develop the factual record in this matter and submit findings and recommendations.⁸ On April 25, 2005, the OAH recommended that Qwest not be required to provide service to customers in the Tofte exchange service area⁹ unless 50 customers each paid a one-time construction charge of \$5,441.

After filing exceptions and replies, the Department and Qwest reached an agreement for resolving the matter on June 10, 2005.

II. The Agreement

Under the Agreement, Qwest must extend telephone service to the “Designated Tofte Area” (see attached maps) before 2007, barring unanticipated delays in obtaining necessary governmental permits, subject to the following conditions:

- By October 1, 2005, at least 50 customers in the Designated Tofte Area must state in writing that they are willing to accept Qwest’s service for at least 90 days, and pay a one-time “special construction charge” of \$4,800 by a date of Qwest’s choosing between November 1 and December 15, 2005.
- By a date of Qwest’s choosing between November 1 and December 15, 2005, at least 50 customers must sign the service contracts with Qwest and pay the special construction charge.

If both of these conditions are fulfilled, then Qwest would impose the \$4,800 special construction charge on the initial customers as well as on all subsequent service extensions in the Designated Tofte Area, including service extensions built on behalf of competing telecommunications carriers. If either of the conditions remain unfulfilled, then the docket would close.

At hearing, Qwest acknowledged its duty to serve the Tofte exchange service area regardless of whether 50 people accepted the terms of the agreement. The terms under which Qwest would offer service, however, will not be governed by the Agreement unless 50 or more people accept its terms.

Also during the hearing, no party objected to a Commission proposal to extend the Agreement’s subscriber deadlines by a month. Qwest agreed to submit the proposed customer contracts and letters to the Executive Secretary for review, and to work with the Executive Secretary in addressing customer response issues, discussed below.

⁸ NOTICE AND ORDER FOR HEARING.

⁹ To reduce construction costs, the Department and Qwest recommend serving some of the lots in the “Tofte exchange service area” through the Grand Marais switch rather than the Tofte switch.

III. Analysis

The Commission reviews settlements to determine if they are in the public interest and supported by substantial evidence. Minn. Stat. § 237.076.

In short, the Agreement states that Qwest will build facilities if at least 50 residents agree to pay a \$4,800 construction charge. This is similar to the position argued by the Department before the OAH. By comparison, the OAH recommended that Qwest not be required to install facilities until at least 50 residents commit to paying a \$5,441 construction charge. The fact that the Agreement's construction charge is less than the ALJ's recommended charge is strong evidence that it is not too high; the fact that Qwest supports the Agreement's terms is strong evidence that the charge is not too low. The Commission finds adequate evidence to support the Agreement.

Moreover, the Agreement provides a reasonable and practical mechanism for resolving the petitioners' requests for service within the limits of prudent investment. If sufficient demand emerges to justify Qwest's investment, the Agreement will require Qwest to build the facilities necessary to serve the area; otherwise, it won't. No party has expressed opposition to the Agreement. The Commission finds that this Agreement is in the public interest generally.

The Commission is concerned, however, that the Agreement's time frames needlessly constrain residents in their decision whether to make a \$4,800 investment, and limit the time for gathering the needed funds. The Department and Qwest acknowledge that nothing in the record compels the specific dates specified in the Agreement, but they argue that the Agreement must establish some deadlines if Qwest is to meet the Agreement's goal of completing the project before 2007.

At hearing, the Commission proposed extending the deadlines for customer responses by one month. Specifically, the Commission proposed changing the deadline for residents to make written commitments to participate from October 1 to November 1, 2005. And the Commission proposed delaying the period during which Qwest could require a contractual commitment and payment from November 1 - December 15, 2005 until December 1, 2005 - January 15, 2006. No party opposed this proposal. The Commission concludes that the public interest would be better served by extending the Agreement's deadlines.

IV. Commission Action

For the foregoing reasons, the Commission finds the Agreement is supported by substantial evidence and serves the public interest, provided that the deadlines can be extended to offer residents sufficient time to respond. As modified, the Agreement will be approved.

To implement the Agreement's terms, the Commission will direct Qwest to submit proposed customer contracts and letters to the Commission's Executive Secretary for review. The Commission will also direct Qwest to work with its Executive Secretary and the Department in monitoring and responding to the responses from residents in the Designated Tofte Area.

ORDER

1. The agreement of June 10, 2005, is approved with the following modification: Qwest will construct the project to extend service to the Designated Tofte Area if –
 - by November 1, 2005, at least 50 customers in the Designated Tofte Area commit in writing to accept Qwest's service and pay a \$4,800 special construction charge, and
 - by a date of Qwest's choosing between December 1 and January 15, 2006, at least 50 customers sign binding contracts with Qwest and pay the special construction charge.
2. Qwest shall submit the proposed customer contracts and letters to the Executive Secretary for review, and shall work with the Executive Secretary and the Department in addressing consumer response issues.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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